



Office of the Attorney General  
State of Texas

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ATTORNEY GENERAL

December 13, 1991

Ms. Georgia Flint  
Acting Commissioner  
Texas Department of Insurance  
P. O. Box 149104  
Austin, Texas 78714-9104

OR91-624

Dear Commissioner Flint:

Your predecessor in office asked whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. This request was assigned ID# 13655.

The Texas Department of Insurance (the department) has received a request for "a copy of the complete Premium Finance Unit Audit Report that was prepared and submitted to the Commissioner of Insurance by the Internal Auditors." We have been advised that some of the requested information, including the transcript and tape of a certain interview, will be disclosed.

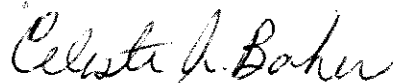
Your agency has explained to us that three pages of the audit report have been "inadvertently released" and asked whether the documents may be excepted from further disclosure. The Open Records Act does not preclude a governmental body from invoking one or more of the act's exceptions to protect from further public disclosure information which has been released on a limited basis through no official action and against the wishes and policy of the governmental body. Open Records Decision No. 376 (1983). Given your agency's explanation regarding the release of the three pages, we conclude that the documents are subject to our determination regarding the exceptions that the department has claimed. The department claims that all of the requested information is excepted from required public disclosure by section 3(a)(3) of the Open Records Act and that parts of it are excepted by sections 3(a)(1), 3(a)(7), and 3(a)(11).

Previous open records decisions issued by this office resolve this request. Because the section 3(a)(3) claim is most inclusive, we will address it first. Open Records Decision No. 555 (1990) held that a section 3(a)(3) exception is applicable when litigation is pending or may be reasonably anticipated and if the requested information relates to that litigation. Section 3(a)(3) forces parties to a lawsuit to obtain relevant information through the normal process of discovery. Open Records Decision No. 551 (1990) at 4. The litigation exception may be applied to records relating to a contested case before an administrative agency. Open Records Decision No. 368 (1983).

The department has submitted to us for review a letter from the attorney representing the requestor in a department grievance proceeding. In this letter the attorney states that the requestor's intention is "to claim and assert all substantive and procedural rights . . . to his employment with [the department] and to assert any claims or complaints . . . against [the department]." Given these facts, we conclude that litigation may be reasonably anticipated. We further conclude that the requested information relates to the anticipated litigation. Accordingly, the requested information may be withheld from required public disclosure under section 3(a)(3) of the Open Records Act unless previously disclosed through discovery or by court order. Please note that this ruling applies only for the duration of the litigation and to the documents at issue. *See* Open Records Decision No. 551.

Because case law and prior published open records decisions resolve this request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-624.

Yours very truly,



Celeste A. Baker  
Assistant Attorney General  
Opinion Committee

CAB/GK/lcd

Ref.: ID# 13655, 13875, 13914

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